

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL R. BLACK, *et al.*,

Defendants.

NO. CV-07-355-RHW

**ORDER GRANTING THE
UNITED STATES' SECOND
MOTION FOR ENTRY OF
ORDER OF JUDICIAL SALE**

On July 16, 2010, in its Order Granting the United States' Motion for Summary Judgment (ECF No. 205), the Court ordered that the United States' federal tax liens be foreclosed and that the subject property, described below, be sold pursuant to 28 U.S.C. § 2001, and the proceeds from such sale be applied to the United States' liens on all property and rights to property belonging to Defendants Daniel R. Black and Maire E. Black. The Court subsequently granted the United States' Motion for Entry of Judgment (ECF No. 224), and entered judgment accordingly (ECF No. 225).

On September 19, 2011, the Black Defendants filed a Motion for Stay Pending Appeal to the Ninth Circuit Court of Appeals (ECF No. 253). Defendants ask the Court to stay the judicial sale, but have not offered to post any bond. Here, the Court does not find that the Black Defendants have met their burden of showing the presences of unusual circumstances that would justify granting an unsecured stay. *See Nken v. Holder*, 129 S.Ct. 1749, 1761 (2009).

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1 The Subject Property in this action consists of the following four parcels of
2 land:

3 **Parcel A**

4 A 160-acre parcel identified by Chelan County Tax # 272201-100000. The
5 address for Parcel A is 56 Union Valley Loop Road, Chelan, Washington. The
6 Taxpayers' current residence is located on this parcel. The legal description of
7 Parcel A is as follows:

8 Lots 1 and 2 and the South half of the Northeast quarter; and the
9 Northwest quarter of the Southeast quarter of Section 1, Township 27
North, range 22 East of the Willamette Meridian.

10 **Parcel B**

11 A 27-acre parcel identified by Chelan County Tax # 272201-230025. A
12 mobile home permanently affixed to the land is located on this property. The legal
13 description of Parcel B is as follows:

14 The Southwest quarter of the Northwest quarter and that portion of
15 Government Lot 4, lying South of Union Valley Road #38 right of
16 way in Section 1, Township 27 North, Range 22, E.W.M. Chelan
County, Washington; except the East 575 feet thereof.

17 **Parcel C**

18 An 8-acre parcel identified by Chelan County Tax # 272201-200050. Parcel
19 C is commonly known as both 56 Valley Loop Road, Chelan, Washington, and 96
20 Valley Loop Road, Chelan, Washington. The legal description of Parcel C is as
21 follows:

22 Beginning at the Southwest corner of the Northwest quarter of the
23 Southeast quarter of Section 1, Township 27 North, range 22 East of
24 the Willamette Meridian; thence North to the Northwest corner of the
25 Northeast quarter of said Section 1; thence West 60 feet; thence South
26 980 feet; thence Southwesterly to a point 174 feet West of a point 320
feet South; thence South 50 feet; thence Southwesterly to a point of
127 feet East of a point 180 feet South; thence South to the South line
of the Northeast quarter of the Southwest quarter of the above
described in Section 1; thence East 60 feet to the point of beginning.
Except right of way for the Union Valley Loop Road.

27 **Parcel D**

28 A 20-acre parcel identified by Chelan County Tax # 272201-42000 and

1 referred to as orchard property. The legal description of Parcel D is as follows:
2 The North half of the Northwest quarter of the Southeast quarter of Section 1,
3 Township 27 North, Range 22 East of the Willamette Meridian.
4 (Hereinafter collectively "the Subject Property")

5 Accordingly, **IT IS ORDERED:**

6 1. The United States Marshal for the Eastern District of Washington (or
7 his/her representative), or an Internal Revenue Service Property Appraisal and
8 Liquidation Specialist ("PALS"), is authorized and directed under 28 U.S.C. §§
9 2001 & 2002 to offer for public sale and to sell, individually, collectively, or in
10 other combinations, the parcels constituting the Subject Property. The United
11 States may choose either the United States Marshal or a PALS to carry out the sale
12 under this order and shall make the arrangements for any sale as set forth in this
13 Order.

14 2. The United States Marshal or a PALS representative is authorized to
15 have free access to the Subject Property and to take all actions necessary to
16 preserve the Subject Property, including, but not limited to, retaining a locksmith
17 or other person to change or install locks or other security devices on any part of
18 the Subject Property, until the deed to the Subject Property-or a portion thereof , in
19 the event that parcels are not sold-is delivered to the ultimate purchaser.

20 3. The terms and conditions of the sale are as follows:

21 a. The sale of the Subject Property or any portion thereof under this
22 Order shall be free and clear of the interests of the United States, Defendants
23 Daniel R. Black and Maire E. Black, Defendant B.C. Trust, Defendant Summer
24 Hill Freedom Trust, and Defendant Hope Springs, Corporation Sole;

25 b. The sale (or sales) shall be subject to building lines, if established, all
26 laws, ordinances, and governmental regulations (including building and zoning
27 ordinances) affecting the Subject Property, and easements and restrictions of
28 record, if any;

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1 c. The sale (or sales) shall be held at the courthouse of the county or city
2 in which the Subject Property is located, on the Subject Property's premises, or at
3 any other place in accordance with the provisions of 28 U.S.C. §§ 2001 & 2002;

4 d. The date and time for sale (or sales) are to be announced by the
5 United States Marshal or a PALS;

6 e. Notice of the sale (or sales) shall be published once a week for at least
7 four consecutive weeks before the sale in at least one newspaper regularly issued
8 and of general circulation in Chelan County, and, at the discretion of the United
9 States Marshal or a PALS, by any other notice deemed appropriate. The notice
10 shall contain a description of the Subject Property or portion thereof being offered
11 for sale and shall contain the terms and conditions of sale in this order of sale;

12 f. The minimum bid for the Subject Property or portion thereof will be
13 set by the Internal Revenue Service. If the minimum bid is not met or exceeded,
14 the United States Marshal or a PALS, without further permission of this Court, and
15 under the terms and conditions in this Order, hold a new public sale, if necessary,
16 and reduce the minimum bid or sell to the second highest bidder;

17 g. The successful bidder(s) shall be required to deposit at the time of the
18 same with the United States Marshal or a PALS a minimum of ten percent of the
19 bid, with the deposit to be made by certified or cashier's check payable to the
20 United States District Court for the Eastern District of Washington. Before being
21 permitted to bid at the sale, bidders shall display to the United States Marshal or a
22 PALS proof that they are able to comply with this requirement. No bids will be
23 received from any person(s) who have not presented proof that, if they are the
24 successful bidders(s), they can make the deposit required by this order of sale;

25 h. The balance of the purchase price for the Subject Property or portion
26 thereof is to be paid to the United States Marshal or a PALS (whichever person is
27 conducting the sale) within 20 days after the date the bid is accepted, by a certified
28 or cashier's check payable to the United States District Court for the Eastern

1 District of Washington. If the bidder fails to fulfill this requirement, the deposit
2 shall be forfeited and shall be applied to cover the expenses of the sale, including
3 commissions due under 28 U.S.C. § 1921(c), with any amount remaining to be
4 applied to the income tax liabilities of Defendants Daniel R. Black and Maire E.
5 Black at issue herein. The Subject Property or portion thereof shall be again
6 offered for sale under the terms and conditions of this Order. The United States
7 may bid as a credit against its judgment without tender of cash;

8 i. The sale of the Subject Property or portion thereof shall be subject to
9 confirmation by this Court. The United States Marshal or a PALS shall file a
10 report of sale with the Court, together with a proposed order of confirmation of
11 sale and proposed deed, within 20 days from the date of receipt of the balance of
12 the purchase price;

13 j. On confirmation of the sale, the United States Marshal or a PALS
14 shall execute and deliver a deed of judicial sale conveying the Subject Property or
15 portion thereof to the purchaser;

16 k. On confirmation of the sale, all interests in, liens against, or claims to,
17 the Subject Property or portion thereof that are held or asserted by all parties to this
18 action are discharged and extinguished;

19 l. On confirmation of the sale, the recorder of deeds, Chelan County,
20 Washington, shall cause transfer of the Subject Property or portion thereof to be
21 reflected upon that county's register of title; and

22 m. The sale of the Subject Property or portions thereof is ordered
23 pursuant to 28 U.S.C. § 2001, and is made without right of redemption.

24 4. Until the Subject Property is sold, Defendants Daniel R. Black and
25 Maire E. Black shall take all reasonable steps necessary to preserve the parcels
26 constituting the Subject Property (including all buildings, improvements, fixtures
27 and appurtenances on the Subject Property) in its current condition including,
28 without limitation, maintaining a fire and casualty insurance policy on the Subject

1 Property, and ensuring that the Subject Property's taxes are paid in a timely
2 fashion. Defendants Daniel R. Black and Maire E. Black shall neither commit
3 waste against the Subject Property nor cause or permit anyone else to do so.
4 Defendants Daniel R. Black and Maire E. Black shall neither do anything that
5 tends to reduce the value or marketability of the Subject Property nor cause or
6 permit anyone else to do so. Defendants Daniel R. Black and Maire E. Black shall
7 not record any instruments, publish any notice, or take any other action (such as
8 running newspaper advertisements or posting signs) that may directly or indirectly
9 tend to adversely affect the value of the Subject Property or that may tend to deter
10 or discourage potential bidders from participating in the public auction, nor shall
11 they cause or permit anyone else to do so.

12 5. All persons occupying the Subject Property or a portion thereof shall
13 leave and vacate the Subject Property or portion thereof permanently within 10
14 days of the first publication of the notice of the sale of the Subject Property of
15 portion thereof, discussed above, each taking with them his or her personal
16 property (but leaving all improvements, buildings, fixtures, and appurtenances to
17 the Subject Property or portion thereof). If any person fails or refuses to leave and
18 vacate the Subject Property or portion thereof by the time specified in this Order,
19 the United States Marshal's Office, alone, is authorized to take whatever action it
20 deems appropriate to remove such person from the premises, whether or not the
21 sale of the Subject Property or portion thereof is being conducted by a PALS. If
22 any person fails or refuses to remove his or her personal property from the Subject
23 Property or portion thereof by the time specified herein, the personal property
24 remaining on the Subject Property or portion thereof is deemed forfeited and
25 abandoned, and the United States Marshal's Office is authorized to remove it and to
26 dispose of it in any manner it deems appropriate, including sale, in which case the
27 proceeds of the sale are to be applied first to the expenses of sale and the balance to
28 be paid into the Court for further distribution.

1 6. The proceeds arising from sale are to be paid to the Clerk of this Court
2 and applied as far as they shall be sufficient to the following items, in the order
3 specified:

4 First, to the United States Marshal or a PALS (whichever person conducted
5 the sale as arranged by the United States) for the costs of the sale;

6 Second, to all taxes unpaid and matured that are owed to (county, borough or
7 school district) for real property taxes on the Subject Property;

8 Third, to the United States, in partial satisfaction of its valid and subsisting
9 liens against Daniel R. Black, Maire E. Black, and Daniel R. Black and Maire E.
10 Black jointly and severally, as described in paragraphs 3 through 5 of the Order
11 Granting United States' Motion for Entry of Judgment, and pursuant to the
12 Judgment entered in this case.

13 Finally, any balance remaining after the above payments shall be held by the
14 Clerk until further order of the Court.

15 7. The United States' Second Motion for Entry of Order of Judicial Sale
16 (ECF No. 251) is **GRANTED**.

17 8. Defendants' Daniel R. Black and Maire E. Black's Motion for Stay
18 Pending Appeal (ECF No. 253) is **DENIED**.

19 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
20 Order and forward copies to counsel and Defendants.

21 **DATED** this 29th day of September, 2011.

22
23 s/Robert H. Whaley
24 ROBERT H. WHALEY
25 United States District Judge

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